

§ 435.310

(2) Individuals in adoptions subsidized in full or in part by a public agency.

(3) Individuals in nursing facilities when nursing facility services are provided under the plan to individuals within the age group selected under this provision. When the agency covers such individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

(4) Individuals receiving active treatment as inpatients in psychiatric facilities or programs, if inpatient psychiatric services for individuals under 21 are provided under the plan.

[46 FR 47986, Sept. 30, 1981, as amended at 58 FR 4929, Jan. 19, 1993]

§ 435.310 Medically needy coverage of specified relatives.

(a) If the agency provides for the medically needy, it may provide Medicaid to specified relatives, as defined in paragraph (b) of this section, who meet the income and resource requirements of subpart I of this part.

(b) *Specified relatives* means individuals who:

(1) Are listed under section 406(b)(1) of the Act and 45 CFR 233.90(c)(1)(v)(A); and

(2) Have in their care an individual who is determined to be (or would, if needy, be) dependent, as specified in § 435.510.

[58 FR 4929, Jan. 19, 1993]

§ 435.320 Medically needy coverage of the aged in States that cover individuals receiving SSI.

If the agency provides Medicaid to individuals receiving SSI and elects to cover the medically needy, it may provide Medicaid to individuals who—

(a) Are 65 years of age and older, as specified in § 435.520; and

(b) Meet the income and resource requirements of subpart I of this part.

[46 FR 47986, Sept. 30, 1981]

§ 435.322 Medically needy coverage of the blind in States that cover individuals receiving SSI.

If the agency provides Medicaid to individuals receiving SSI and elects to cover the medically needy, it may pro-

42 CFR Ch. IV (10–1–06 Edition)

vide Medicaid to blind individuals who meet—

(a) The requirements for blindness, as specified in §§ 435.530 and 435.531; and

(b) The income and resource requirements of subpart I of this part.

[46 FR 47986, Sept. 30, 1981]

§ 435.324 Medically needy coverage of the disabled in States that cover individuals receiving SSI.

If the agency provides Medicaid to individuals receiving SSI and elects to cover the medically needy, it may provide Medicaid to disabled individuals who meet—

(a) The requirements for disability, as specified in §§ 435.540 and 435.541; and

(b) The income and resource requirements of Subpart I of this part.

[46 FR 47986, Sept. 30, 1981; 46 FR 54743, Nov. 11, 1981]

§ 435.326 Individuals who would be ineligible if they were not enrolled in an MCO or PCCM.

If the agency provides Medicaid to the categorically needy under § 435.212, it may provide it under the same rules to medically needy recipients who are enrolled in MCOs or PCCMs.

[67 FR 41095, June 14, 2002]

§ 435.330 Medically needy coverage of the aged, blind, and disabled in States using more restrictive eligibility requirements for Medicaid than those used under SSI.

(a) If an agency provides Medicaid as categorically needy only to those aged, blind, or disabled individuals who meet more restrictive requirements than used under SSI and elects to cover the medically needy, it may provide Medicaid as medically needy to those aged, blind, or disabled individuals who:

(1) Do not qualify for Medicaid as categorically needy under § 435.121 or § 435.230; and

(2) If applying as blind or disabled, meet the definition of blindness or disability established under § 435.121.

(b) Except as specified in paragraph (c) of this section, the agency must apply to individuals covered under the option of this section the same financial and nonfinancial requirements that are applied to individuals covered

as categorically needy under §§ 435.121 and 435.230.

(c) In determining the financial eligibility of individuals who are considered as medically needy under this section, the agency must apply the financial eligibility requirements of subparts G and I of this part.

[58 FR 4929, Jan. 19, 1993]

§ 435.340 Protected medically needy coverage for blind and disabled individuals eligible in December 1973.

If an agency provides Medicaid to the medically needy, it must cover individuals who—

(a) Where eligible as medically needy under the Medicaid plan in December 1973 on the basis of the blindness or disability criteria of the AB, APTD, or AABD plan;

(b) For each consecutive month after December 1973, continue to meet—

(1) Those blindness or disability criteria; and

(2) The eligibility requirements for the medically needy under the December 1973 Medicaid plan; and

(c) Meet the current requirements for eligibility as medically needy under the Medicaid plan except for blindness or disability criteria.

[46 FR 47987, Sept. 30, 1981]

§ 435.350 Coverage for certain aliens.

If an agency provides Medicaid to the medically needy, it must provide the services necessary for the treatment of an emergency medical condition, as defined in § 440.255(c) of this chapter, to those aliens described in § 435.406(c) of this subpart.

[55 FR 36819, Sept. 7, 1990]

Subpart E—General Eligibility Requirements

§ 435.400 Scope.

This subpart prescribes general requirements for determining the eligibility of both categorically and medically needy individuals specified in subparts B, C, and D of this part.

§ 435.401 General rules.

(a) A Medicaid agency may not impose any eligibility requirement that is prohibited under Title XIX of the Act.

(b) The agency must base any optional group covered under subparts B and C of this part on reasonable classifications that do not result in arbitrary or inequitable treatment of individuals and groups and that are consistent with the objectives of Title XIX.

(c) The agency must not use requirements for determining eligibility for optional coverage groups that are—

(1) For families and children, more restrictive than those used under the State's AFDC plan; and

(2) For aged, blind, and disabled individuals, more restrictive than those used under SSI, except for individuals receiving an optional State supplement as specified in § 435.230 or individuals in categories specified by the agency under § 435.121.

§ 435.402 [Reserved]

§ 435.403 State residence.

(a) *Requirement.* The agency must provide Medicaid to eligible residents of the State, including residents who are absent from the State. The conditions under which payment for services is provided to out-of-State residents are set forth in § 431.52 of this chapter.

(b) *Definition.* For purposes of this section—*Institution* has the same meaning as *Institution* and *Medical institution*, as defined in § 435.1010. For purposes of State placement, the term also includes *foster care homes*, licensed as set forth in 45 CFR 1355.20, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

(c) *Incapability of indicating intent.* For purposes of this section, an individual is considered incapable of indicating intent if the individual—

(1) Has an I.Q. of 49 or less or has a mental age of 7 or less, based on tests acceptable to the mental retardation agency in the State;

(2) Is judged legally incompetent; or

(3) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the